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by deleting Sections 1, 2 and 3 of the bill and by substituting instead the following new sections:

SECTION 1. (a) Tennessee Code Annotated, Section 50-6-102 is amended by deleting subdivision (5) in its entirety and by substituting instead the following new subdivision (5):

(a) In this chapter, unless the context otherwise requires:

(5)(A) "Injury" and "personal injury" mean an injury by accident arising out of and in the course of employment which causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment which cause either disablement or death of the employee. Compensability must be established by medical evidence supported by objective findings. The employee has the burden of proof that an injury arose out of and in the course of employment. The burden of proof is not sustained merely by disproving other possible explanations of how the injury occurred.

(B)(i) No injury or disease shall be compensable unless a work-related injury or disease is the predominant cause of the disability.

(ii) No injury or disease shall be compensable as a consequence of a compensable injury unless the compensable injury is the predominant cause of the consequential condition.

(iii) If a compensable injury combines with a preexisting disease or condition to cause or prolong disability or a need for treatment, the resultant condition is compensable only to the extent the compensable injury is and remains the predominant cause of the disability or need for treatment.

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(iv) If the predominant cause of a worsened condition is an injury not occurring within the course and scope of employment, the worsening is not compensable. If the injury has been in a nondisabling status for one year or more after the date of injury, the claim for a worsened condition must be made within 2 years after the date of injury.

(C) Injury shall not include coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

(D) An injury shall not be considered as having arisen out of the employment, and thereby not covered by the provisions of this chapter, if the injured employee was engaged in horseplay at the time of the injury;

(b) Tennessee Code Annotated, Section 50-6-102 is amended by deleting subdivision (11) in its entirety and by substituting instead the following new subdivision.

(11) "Case Management" means medical case management or the ongoing coordination of medical care services provided to an injured or disabled employee.

(c) Tennessee Code Annotated, Section 50-6-102 is further amended by adding as new subdivisions the following:

"(17) "Permanent partial disability" means a condition whereby a worker, by reason of injury arising out of and in the course of employment suffers a permanent impairment.

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(18) "Impairment" means an anatomical or functional abnormality existing after the date of maximum medical improvement as determined by a medically or scientifically demonstrable finding based upon the most recent edition of American Medical Association's Guide to the Evaluation of Permanent Impairment or the American Academy of Orthopedic Surgeons Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment.

(19) "Maximum medical improvement" means a point in time when any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to improve the condition. The requirement for future medical maintenance which will not significantly improve the condition or the possibility of improvement or deterioration resulting from the passage of time shall not affect a finding of maximum medical improvement. The possibility of improvement or deterioration resulting from the passage of time alone shall not affect a finding of maximum medical improvement. Maximum medical improvement shall be presumed in the absence of objectively measurable improvement for a period of thirty (30) days. This presumption may be rebutted by clear and convincing evidence. A good faith determination that an employee has attained maximum medical improvement shall not be the basis for medical professional liability.

(20) "Temporary total disability" means the inability of the employee, by reason of an accidental injury arising out of and in the course of employment to perform his duties prior to the date of maximum medical improvement.

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(21) "Attending physician" means a doctor or physician who is primarily responsible for the treatment of a worker's compensable injury and who is a medical doctor licensed by the state of Tennessee and authorized by the employer pursuant to Section 50-6-204.

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 6 is amended by adding the following new section to be appropriately designated:

"(a) Mental injury does not arise out of and in the course of employment unless it is caused by physical injury to the claimant's body. No mental injury shall be considered a compensable injury unless a determination of mental injury, its cause and resulting disability or need for medical treatment is diagnosed by a psychiatrist and supported by clear and convincing psychiatric evidence.

(b) In cases where the injury results in a permanent impairment and the treating physician specifically finds that a mental, psychological, or emotional injury or disorder has resulted from the injury, the base value of the employee's permanent impairment rating shall be increased by one percent (1%) to the body as a whole for the mental injury. It is not intended that this award for the mental, psychological, or emotional injury be for mere depression from being out of work, but the intent is that there be competent medical testimony regarding a specific and permanent mental, psychological, or emotional disorder which resulted from the injury.

SECTION 3. Tennessee Code Annotated Section 50-6-110 is amended by deleting such section in its entirety and by substituting instead the following:

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No compensation shall be allowed for an injury or death due to the employee's willful misconduct or intentional self-inflicted injury, or substantially due to intoxication of the injured employee, or willful failure or refusal to use a safety appliance or perform a duty required by law. After an injury or death, a positive test for the presence of alcohol in concentrations of 0.04% or greater, illegal drugs, or prescription drugs used in contravention of a physician's orders shall create a rebuttable presumption that the injury or death was substantially due to intoxication.

SECTION 4. Tennessee Code Annotated, Section 50-6-116, is amended by deleting such section in its entirety and by substituting the following:

It is the intent of the legislature that the workers' compensation law be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer. It is the specific intent of the legislature that workers' compensation cases shall be decided on their merits. In addition, it is the intent of the legislature that the facts in a workers' compensation case are not to be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Additionally, the legislature hereby declares that disputes concerning the facts in workers' compensation cases are not to be given a broad liberal construction in favor of the employee on the one hand or of the employer on the other hand, and the laws pertaining to workers' compensation are to be construed in accordance with the basic principles of statutory construction and not liberally in favor of either employee or employer. It is the intent of the legislature to ensure the prompt delivery of benefits to the injured worker; therefore, an efficient and

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self-executing system must be created which is not an economic or administrative burden. The workers' compensation division, and courts, therefore, have the duty to administer and interpret the workers' compensation law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.

SECTION 5. Tennessee Code Annotated, Section 50-6-123, is amended by deleting such section in its entirety and by substituting instead the following:

Nothing in this act shall prevent an insurer or self-insured employer from establishing its own program of case management. Nothing in this act shall be interpreted to deny a case manager reasonable access to an injured employee.

SECTION 6. Tennessee Code Annotated, Section 50-6-127, is amended by deleting such section in its entirety and by substituting instead the following:

(a) No person shall make or cause to be made any false or fraudulent material statement or material representation which such person does not believe to be true, for the purpose of obtaining or denying any compensation, benefits, or expenses, or insurance coverage pursuant to this chapter, whether such statement or representation is made for himself or herself or for any other person.

(b) No person shall present or cause to be presented any false or fraudulent written or material statement which such person does not believe to be true, in support of, or in opposition to, any compensation, benefits, expenses or insurance coverage pursuant to this chapter, whether such statement or representation is made for himself or for any other person.

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(c) No person shall present or cause to be made any knowingly false or fraudulent statements with regard to entitlements to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

(d) A violation of this section is a Class E felony. Upon conviction, the court may order a forfeiture of all rights to compensation, benefits or expenses sought. In addition, the employer or insurer providing the compensation, benefits, or expenses shall be entitled to restitution.

(e) The worker's compensation division shall investigate to determine whether any fraudulent conduct relating to worker's compensation is being practiced, and shall refer to the Tennessee Bureau of Investigation any finding of fraud. Upon a determination by the division or a court, as appropriate, that a person has obtained or attempted to obtain compensation, benefits or expenses as a result of a statement or representation prohibited by this section, immediate termination or denial of benefits shall be ordered.

(f) In cases where the division finds reasonable cause for belief that an award of benefits has been obtained by fraud within the meaning of this section, the department shall file an appropriate motion to set aside the judgment awarding such benefits.

(g) Any other statute or rule of Court notwithstanding, the department or any interested party shall be allowed at any time within five (5) years of judgment to file an appropriate motion under Rule 60 (b), of the Tennessee Rules of Civil Procedure, to set aside such judgment on the ground that it was obtained by fraud within the meaning of this section. Criminal prosecution of the violator shall not be a prerequisite for the filing of such a motion.

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(h) In the absence of actual malice, no person shall be subject to civil liability for libel, slander or any other cause of action arising from furnishing information concerning activity that may constitute fraud as provided in this section, if such information is provided to or received by the division, department of commerce and insurance, law enforcement officials, any federal, state or private agency established to detect, prevent, or prosecute fraud, or an employer or insurer authorized to do business in this state. The immunity conferred by this section applies unless the person seeking to impose civil liability proves actual malice. Any person against whom a civil action is brought, and who is found to be entitled to immunity from liability under this section, shall be entitled to recover reasonable attorney's fees and costs from the person who brought the civil action. Nothing in this subsection shall be construed as abrogating or limiting any other immunity enjoyed by such a defendant either by statute or at common law.

SECTION 7. (a) Tennessee Code Annotated, Section 50-6-204 is amended by adding new divisions (a)(6) and (a)(7) as follows:

(a)(6) Any insurer or self-insured employer may satisfy the requirements of this section by entering into a managed care arrangement. Notwithstanding any other provision of the Workers' Compensation Law, if an insurer or self-insured employer enters into a managed care arrangement for medical services required under the Workers' Compensation Law, those employees who are subject to the arrangement shall receive medical care in a manner prescribed by the arrangement. However, an employee may receive immediate emergency medical treatment that is compensable from a medical provider who is not a member of the managed care

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organization. An employee must exhaust the dispute resolution procedure of a managed care organization prior to filing a petition or otherwise seeking relief from the division on an issue related to managed care or choice of physician. The commissioner may, by rule, set out procedures to resolve disputes or issues related to managed care or choice of physician.

(7) A health care provider may not pursue a private claim against an employee or the insured employer for all or part of the costs of medical care provided to the employee by the provider unless the claim is finally adjudicated not to be compensable under the Workers' Compensation Law or unless the employee violates this section.

(b) Tennessee Code Annotated, Section 50-6-204 is further amended by deleting subdivision (d)(5) in its entirety and by substituting the following:

(5)(A) In case a dispute as to the extent, nature or cause of disability or death, or whether the employee has reached maximum medical improvement as defined in §50-6-102(19), the attending physician who has provided the primary care shall make a determination on medical issues as provided in this section. If either party disputes the attending physician's finding, the dispute shall be resolved by an independent medical examiner whose findings shall be binding on the parties, the division, and on the court. The finding of such independent medical examiner shall be overcome only by clear and convincing evidence. If the parties are unable to mutually agree on the selection of an independent medical examiner, the division shall assign a panel of three independent medical examiners. When a panel has been assigned to a case under this subsection, the parties shall be notified immediately. Each side may strike one name from this

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panel. Any rejection must be made not later than the third day after the date of notification of the panel's assignment. A hearing on this matter shall not take place until the finding of the independent medical examiner selected by the division has been filed with the division. No party shall have the right to more than one panel under this section except at the discretion of the division.

(B) When the injured employee reaches maximum medical improvement, the attending physician shall determine a medical impairment rating. For purposes of determining levels of medical impairment, the physician shall not render a medical impairment rating based on chronic pain without anatomic and physiologic correlation. Anatomic correlation must be based on objective findings. If either party disputes the attending physician's finding of medical impairment, the parties may select an independent medical examiner by mutual agreement. The finding of such independent medical examiner shall be binding on the parties and on the division. If the parties are unable to mutually agree on the selection of an independent medical examiner, the division shall assign a panel of three independent medical examiners. When a panel has been assigned to a case under this subsection, the parties shall be notified immediately. Each side may strike one name from this panel. Any rejection must be made not later than the third day after the date of notification of the panel's assignment. The finding of such independent medical examiner regarding the medical impairment rating shall be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division. All costs and fees for an independent medical examiner shall be allocated

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pursuant to Section 50-6-226(a). No party shall have the right to more than one panel under this section except at the discretion of the division.

(C) The division shall certify independent medical examiners to assist the division as provided in this section. The division shall, in certifying, rectifying, or decertifying an independent medical examiner, consider the qualifications, training, impartiality, and commitment of the health care provider to the provision of quality medical care at a reasonable cost. The division shall require, at a minimum, specialized workers' compensation training or experience under the Tennessee workers' compensation system and board certification as a condition to certification or recertification. An independent medical examiner shall be licensed to practice medicine or surgery under title 67, chapter 6, part 2.

SECTION 7. Tennessee Code Annotated, Section 50-6-206 is hereby amended by deleting such section in its entirety and by substituting instead the following:

All interested parties shall have the right to settle all matters of compensation among themselves, including benefits payable under Section 50-6-208, but all settlements, in order to be binding on any party, must be reduced to writing and approved by the division. In cases involving claims against the Second Injury Fund, the division shall not approve any settlement unless it affirmatively appears that the Fund was appropriately represented in the settlement negotiations. Nor shall the division approve any settlement that fails to fix the liability of the Second Injury Fund at the same time as the liability of the other parties. The division shall have the duty to determine whether the employee is receiving substantially the benefits provided by the Worker's

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Compensation statutes. But where there is a dispute among the parties as to whether an injury is compensable or as to the amount of benefits due, the parties may settle the matter without regard to whether the employee is receiving substantially the benefits of the Worker's Compensation statutes, any other provision of this section notwithstanding; provided that in any such case, the division's approval of the settlement must include an express finding that the settlement is in the best interest of the employee.

SECTION 9. Tennessee Code Annotated, Section 50-6-207, is amended by deleting such section in its entirety and by substituting instead the following:

The following is the schedule of compensation to be allowed employees under the provisions of the Workers' Compensation Law:

(1) TEMPORARY TOTAL DISABILITY. For injury producing temporary total disability, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages as defined in this chapter, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, such employee shall receive not less than the minimum weekly benefit; and provided further, that if such employee's average weekly wages are less than the minimum weekly benefit such employee shall receive the full amount of such employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. Where a fractional week of temporary total disability is involved, the compensation for each day shall be one-seventh (1/7) of

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the amount due for a full week. Temporary total disability benefits shall continue until any one of the following first occurs:

(A) A physician determines that the employee has reached maximum medical improvement;

(B) The employee returns to regular or modified employment;

(C) A physician gives the employee a written release to return to regular employment; or

(D) A physician gives the employee a written release to return to modified employment, such employment is offered to the employee in writing, and the employee fails to begin such employment.

(2) TEMPORARY PARTIAL DISABILITY. In all cases of temporary partial disability, the compensation shall be sixty-six and two-thirds percent (66 2/3%) of the difference between the wage of the worker at the time of the injury and the wage such worker is able to earn in such worker's partially disabled condition. This compensation shall be paid during the period of such disability, not, however, beyond four hundred (400) weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum, as stated in subdivision (1). In no event shall the compensation be less than the minimum weekly benefit;

(3) PERMANENT PARTIAL DISABILITY.

(A) For permanent partial disability the workers' compensation benefits provided shall be that percentage of the weekly benefit payable for temporary total disability as

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provided in subsection (1). The percentage of permanent partial disability shall be determined pursuant to the provisions of sections 7 through 11 of this act. The duration of permanent partial disability benefits shall depend upon the extent and the nature of the partial disability, subject to the following:

(i) Where the worker's percentage of disability is less than fifteen (15), the maximum period is 75 weeks;

(ii) Where the worker's percentage of disability is fifteen (15) or more but less than eighty (80), the maximum period is two hundred and seventy-five (275) weeks;

(iii) Where the worker's percentage of disability is equal to or greater than eighty (80), the maximum period is four hundred (400) weeks;

(B) For serious disfigurement to the head, face or hands, not resulting from the loss of a member or other injury specifically compensated, so altering the personal appearance of the injured employee as to materially affect such injured employee's employability in the employment in which such injured employee was injured or other employment for which such injured employee is then qualified, sixty-six and two-thirds percent (66 2/3%) of average weekly wages for such period as the court may determine, not exceeding two hundred (200) weeks. The benefit herein provided shall not be awarded in any case where the injured employee is compensated under any other provision of the Workers' Compensation Law; and

(4) PERMANENT TOTAL DISABILITY. (A)(i) For permanent total disability as defined in subdivision (4)(B), sixty-six and two-thirds percent (66 2/3%) of the wages received at the

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time of the injury, subject to the maximum weekly benefit and minimum weekly benefit provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, the employee shall receive not less than the minimum weekly benefit; provided further, that if the employee's average weekly wages are less than the minimum weekly benefit the employee shall receive the full amount of the employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. This compensation shall be paid during the period of such permanent total disability until the employee reaches the age of sixty-five (65); provided, that with respect to disabilities resulting from injuries which occur after age sixty (60), regardless of the age of the employee, permanent total disability benefits are payable for a period of two hundred sixty (260) weeks. Such compensation payments shall be reduced by the amount of any old age insurance benefit payments attributable to employer contributions which the employee may receive under the Social Security Act, U.S.C., title 42, chapter 7, subchapter II, as amended.

(ii) In no event shall the commuted portion of an award under this section exceed the value of one hundred (100) weeks of the employee's benefits. The court may commute benefits to a lump sum to pay legal fees and to pay pre-injury obligation in arrears.

(iii) Attorneys' fees in contested cases of permanent total disability shall be calculated upon the first four hundred (400) weeks of disability only.

(iv) In case an employee who is permanently and totally disabled becomes an inmate of a public institution, and provided further, that if no person or persons are wholly dependent upon such employee, then the amounts falling due during the lifetime of such employee shall be paid to

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such employee or to such employee's guardian, if non compos mentis, to be spent for the ward's benefit; such payments to cease upon the death of such employee.

(v) No medical or disability benefits under this act shall be payable during any period in which an employee is incarcerated, provided that no person or persons are wholly dependent upon such employee. Disability benefits shall be paid to a guardian during such period of incarceration if there is a person or persons wholly dependent on the employee.

(B) When an injury not otherwise specifically provided for in this chapter as amended, totally incapacitates the employee from working at an occupation which brings such employee an income, such employee shall be considered 'totally disabled', and for such disability compensation shall be paid as provided in subdivision (4)(A); provided, that the total amount of compensation payable hereunder shall not exceed the maximum total benefit, exclusive of medical and hospital benefits; and

(5) DEDUCTIONS IN CASE OF DEATH. In case a worker sustains an injury due to an accident arising out of and in the course of such worker's employment, and during the period of disability caused thereby death results proximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of death.

SECTION 10. Tennessee Code Annotated, Title 50, Chapter 6 is amended by adding the following new section to be appropriately designated:

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(a) As a guide to the interpretation and application of this section, the policy and intent of this legislature is declared to be that every person who suffers a compensable injury with resulting permanent partial disability should be provided with the opportunity to return to gainful employment as soon as possible with minimal dependence on compensation awards.

(b) As used under the provisions of this title, the term 'partial disability' means a condition whereby a worker, by reason of injury arising out of and in the course of employment, suffers a permanent impairment.

(c) Permanent partial disability shall be determined by calculating the workers' impairment as modified by his age, education and physical capacity at the time of maximum medical improvement, pursuant to sections 8 through 11 of this act provided that, regardless of the actual calculation of impairment as modified by the worker's age, education and physical capacity, the percentage of disability awarded shall not exceed ninety-nine percent (99%).

(d) If, on or after the date of maximum medical improvement, an injured worker returns to work at a wage equal to or greater than eighty-five percent (85%) of the workers' pre-injury wage, the worker's permanent partial disability rating shall be equal to his impairment and shall not be subject to the modifications calculated pursuant to sections 8 through 11 of this act.

(e) In cases where the injury results in a permanent impairment and the treating physician specifically finds that a mental, psychological, or emotional injury or disorder has resulted from the injury, the base value of the workers' permanent impairment rating shall be increased by one percent (1%) to the body as a whole for the mental injury. It is not intended that this award for

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the mental, psychological, or emotional injury be for mere depression from being out of work, but the intent is that there be competent medical testimony regarding a specific and permanent mental, psychological, or emotional disorder which resulted from the injury.

SECTION 11. Tennessee Code Annotated, Title 50, Chapter 6, is amended by adding the following new section to be appropriately designated:

(a) For the purpose of determining the percentage of disability pursuant to section 6 of this act, impairment shall constitute the base value.

(b) The appropriate values for the age modification, as determined in Section 12 of this act and the education modification, as determined by Section 13 of this act shall be added together. If this sum is less than zero, the sum shall be deemed to be zero for the purposes of this calculation. This sum shall be multiplied by the appropriate value of the physical capacity modification, determined in section 14 of this act.

(c) The product calculated in subsection (b) of this section shall be added to the base value. This sum represents the percentage of partial disability to be awarded.

SECTION 12. Tennessee Code Annotated, Title 50, Chapter 6 is amended by adding the following new section to be appropriately designated:

() (a) The range of the age modification is zero (0) to four (4). The modification is based upon the workers' age at the time of the disability rating.

(b) For a worker who is:

(1) Forty-four (44) years old or younger, no points shall be awarded;

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(2) Forty-five (45) to forty-nine (49) years old, one (1) point shall be awarded;

(3) Fifty (50) to fifty-four (54) years old, two (2) points shall be awarded;

(4) Fifty-five (55) to fifty-nine (59) years old, three (3) point shall be awarded;

(5) Sixty (60) years or older, four (4) points shall be awarded."

SECTION 13. Tennessee Code Annotated, Title 50, Chapter 6 is amended by adding the following new section to be appropriately designated:

(a) The range of the education modification is zero (0) to seven (7). The modification shall be based upon the worker's formal education, skills and training at the time of the disability rating.

(b) A worker shall be awarded points based on the formal education he has received. A worker who:

(1) Has completed no higher than the fifth grade shall be awarded two (2) points;

(2) Has completed the sixth grade but has completed no higher than the eleventh grade shall be awarded one (1) point;

(3) Has completed the twelfth grade or has obtained a GED certificate but has not completed a college degree shall be awarded zero (0) points; and

(4) Has completed a college degree or more shall receive minus one (-1) point.

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(c) A worker shall be awarded points based upon his skills. Skills shall be measured by reviewing the jobs he has successfully performed during the ten (10) years preceding the date of disability determination. For the purposes of this section, 'successfully performed' means having remained on the job the length of time necessary to meet the specific vocational preparation (svp) time requirement for that job as established in the dictionary of occupational titles published by the United States department of labor. The appropriate award of points shall be based upon the highest svp level demonstrated by the worker in the performance of the jobs he has successfully performed in the ten-year period preceding the date of disability determination, as follows:

- (1) A worker with an svp of one to two shall be awarded four (4) points;
- (2) A worker with an svp of three to four shall be awarded three (3) points;
- (3) A worker with an svp of five to six shall be awarded two (2) points;
- (4) A worker with an svp of seven to nine shall be awarded one (1) point;

(d) A worker shall be awarded points based upon the training he has received. A worker who cannot competently perform a specific vocational pursuit shall be awarded one (1) point. A worker who can perform a specific vocational pursuit shall not receive any points.

(e) The sum of the points awarded the worker in subsections (b), (c) and (d) of this section shall constitute the education modification.

SECTION 14. Tennessee Code Annotated, Title 50, Chapter 6 is amended by adding the following new section to be appropriately designated:

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(a) The range of the physical capacity modification is one (1) to eight (8).

(b) The award of points to worker shall be based upon the difference between the physical capacity necessary to perform the worker's usual and customary work and the worker's residual physical capacity.

The award of points shall be based upon the following table:

RESIDUAL PHYSICAL CAPACITY

			S	L	M	H
PRE-INJURY	S	1	1	1	1	
PHYSICAL CAPACITY		L	2	1	1	1
(USUAL AND	M	4	2	1	1	
CUSTOMARY WORK)	H	8	4	2	1	

(c) For the purposes of this section:

(1) 'H' or 'heavy' means the ability to lift over fifty pounds (50 lbs) occasionally or up to fifty pounds (50 lbs) frequently;

(2) 'M' or 'medium' means the ability to lift up to fifty pounds (50 lbs) occasionally or up to twenty-five pounds (25 lbs) frequently;

(3) 'L' or 'light' means the ability to lift up to twenty pounds (20 lbs) occasionally or up to ten pounds (10 lbs) frequently. Even though the weight lifted may be only a negligible amount, a job is in this category when it requires walking or standing to a significant

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degree or when it involves sitting most of the time with a degree of pushing and pulling of arm or leg controls or both; and

(4) 'S' or 'sedentary' means the ability to lift up to ten pounds (10 lbs) occasionally or up to five pounds (5 lbs) frequently. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required only occasionally and other sedentary criteria are met.

(d) The determination of a worker's residual physical capacity shall be made by an authorized health care provider.

SECTION 15. Tennessee Code Annotated, Chapter 6, Part 2 is amended by adding the following new section to be appropriately designated:

Section _____. No medical or disability benefits under this act shall be payable under any period in which an employee is incarcerated, provided that no person or persons are wholly dependent upon such employee. Disability benefits shall be paid to a guardian during such period of incarceration if there is a person or persons wholly dependent on the employee.

SECTION 16. Tennessee Code Annotated, Section 50-6-226 is amended by deleting subsection (a) and by substituting the following:

(a) The fees of attorneys and physicians and charges of hospitals for services to employees under the Workers' Compensation Law shall be subject to the approval of the division or court before which the matter is pending; provided, that no attorney's fees to be charged employees

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shall be in excess of twenty percent (20%) of the amount of the recovery or award to be paid by the party employing the attorney. When, prior to any benefit review conference or hearing, compensation has been offered and the amount then due is tendered in good faith or paid within twenty-six (26) weeks from the date of the notification to the employer of an accident or an occupational disease or the employee's final active medical treatment, or within twenty-six (26) weeks after the employee's return to work whichever is later or within 26 weeks after notification to the employer of the employee's death, the attorney's fee shall be allowed only on that part of the judgment or award in excess if the amount of compensation theretofore offered, tendered in good faith, or paid.

SECTION 17. Tennessee Code Annotated, Section 50-6-226 is amended by adding a new subsection (c), as follows, and redesignating existing subsection (c) as subsection (d):

(c) In proceedings before the Division or in the courts, each party shall pay its own costs and fees. This provision shall not apply in the discretion of the adjudicator upon finding that a claim has been presented or defended in bad faith."

SECTION 18. Tennessee Code Annotated, Section 50-6-229(a) is amended by deleting such subsection in its entirety and by substituting instead the following:

(a) The amounts of compensation payable periodically hereunder may be commuted to one (1) or more lump sum payments. These may be commuted upon motion of any party subject to the approval of the division or the court, as appropriate. In making such commutation, the lump sum payment shall in the aggregate, amount to a sum equal to the value of

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all future installments of compensation discounted at a rate of six percent (6%). No agreed stipulation or order or any agreement by the employer and employee or any other party to the proceeding shall be a prerequisite to the approval or disapproval of the award being paid in one (1) or more lump sum payments. In making such commutation, the lump sum payment shall, in the aggregate, amount to a sum of all future installments of compensation. No settlement or compromise shall be made except on the terms herein provided. In determining whether to commute an award, the division or the court, as appropriate, shall consider whether the commutation will be in the best interest of the employee, and such division or court, as appropriate, shall also consider the ability of the employee to wisely manage and control the commuted award irrespective of whether there exist special needs. Attorneys' fees shall be paid on a periodic basis but may be paid as a partial lump sum from any lump sum award when approved and ordered by the division or court, as appropriate.

SECTION 19. Tennessee Code Annotated, Section 50-6-232(a), is amended by deleting such subsection in its entirety and by substituting the following:

(a) Any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum equal to the present value of future installments of compensation calculated on a six percent (6%) basis may (where death or the nature of the injury renders the amount of future payment certain), by leave of court, be paid by the employer to any savings bank or trust company of this state to be approved and designated by the court, and such

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sum, together with all interest thereon, shall be held in trust for the employee or the dependents of the employee who shall have no further recourse against the employer.

SECTION 20. Tennessee Code Annotated, Section 50-6-234(a), is amended by deleting such subsection in its entirety and by substituting the following:

(a) In any case where the employer has commenced paying temporary disability benefits to the employee and has then stopped or changed such benefits for any cause other than failure of an employee to submit to employer requests for reasonable medical examinations by the treating physician or final settlement, the employee may request a benefit review conference to attempt to reach agreement on the disputed issues. After the benefit review conference, either party may move the court to set the case for final adjudication on an expedited basis. The employer shall not be required to continue payment of amounts of compensation in dispute pending the final adjudication on an expedited basis.

SECTION 21. Tennessee Code Annotated, Section 50-6-238(c), is amended by deleting the word "inadmissible" and substituting therefor the word "admissible" and by adding the following new sentence after the first sentence:

The specialist shall not be compelled to testify or give depositions in subsequent proceedings, but shall certify the record to a court within ten (10) days of a request by a party.

SECTION 22. Tennessee Code Annotated, Section 50-6-239, is amended by deleting subsection (a) in its entirety and by substituting the following:

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(a) On receipt of a request from a party or on its own motion, the division shall direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim. Except as otherwise provided by law or Division rule, the parties to a disputed claim are not entitled to submit such dispute to court in accordance with Section 50-6-226 unless a benefit review conference is conducted as provided by this Part. The division by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may proceed directly to court.

SECTION 23. Tennessee Code Annotated, Section 50-6-240, is amended by deleting subsection (a) in its entirety and by substituting the following:

(a) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement or in a settlement, the workers' compensation specialist shall reduce the agreement or the settlement to writing. The workers' compensation specialist and each party shall sign the agreement or settlement. A settlement is not effective unless it is approved by the division and takes effect on the date approved.

SECTION 24. Tennessee Code Annotated, Section 50-6-240 is further amended by deleting subsection (c) in its entirety and by substituting the following:

(c) The workers' compensation specialist shall file the signed agreement and the report with the division and the court, and such signed agreement and report shall be admissible.

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SECTION 25. Tennessee Code Annotated, Sections 50-6-241 and 50-6-242, are amended by adding the following language to each section:

For injuries arising on or after the effective date of this act, the permanent partial disability award that the employee may receive shall not be determined pursuant to this section but shall be determined by the provisions of this act.

SECTION 26. Tennessee Code Annotated, Title 50, Chapter 6 is amended by adding a new Section, to be appropriately designated, as follows:

For purposes of this act, if the employer in good faith makes an offer of employment which is refused by the employee without reasonable cause, the employee is considered to have returned to work with the earnings the employee would have received had it not been for such refusal.

SECTION 27. Tennessee Code Annotated, Section 50-6-413 is amended by deleting such Section in its entirety and by substituting the following:

Beginning January 1, 1993, every workers' compensation insurer which provides insurance for Tennessee workers' compensation claims, and every workers' compensation division-approved self-insured employer, shall be required to maintain a workers' compensation claims office, subject to the waiver provisions herein, or to contract with a claims adjuster located within the borders of the state of Tennessee. Such claims office or adjuster has authority to commence temporary total disability benefits and medical benefits if so ordered by the specialist or by a court at a show cause hearing. Waiver requests must be submitted to the division in writing and shall not

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be considered unless the applicant has exercised claims management and filing practices that illustrate proper compliance with the law and other division regulations. Proper compliance shall be measured by the division by continued monitoring of the timeliness of reporting by the carrier/self-insured employer and by monitoring the resolution, or lack thereof, of written complaints regarding noncompliance to all aspects of the Tennessee Workers' Compensation Law and rules of the division and orders of the division or court.

SECTION 28. Tennessee Code Annotated, Section 50-6-402(b) and (c) are repealed.

SECTION 29. Tennessee Code Annotated, Section 56-5-302, is amended by adding new subdivisions (12), (13) and (14), which shall read as follows:

(12) "Advisory Prospective Loss Costs" shall mean historical aggregate losses and loss adjustment expenses projected through development to their ultimate value and through trending to a future point in time. Advisory Prospective Loss Costs shall not include provisions for profit or for expenses other than loss adjustment expenses.

(13) As used in this part, "rate" shall include Advisory Prospective Loss Costs.

(14) As used in this part, "multiplier" means a workers' compensation insurance company's determination of the expenses, other than loss expense and loss adjustment expense, associated with writing workers' compensation insurance, which shall be expressed as a single non-integral number to be applied equally and uniformly to the Advisory Prospective Loss Costs approved by the commissioner in making rates for each classification of risks utilized by such company.

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SECTION 30. Tennessee Code Annotated, Section 56-5-303(a), is amended by deleting such subsection in its entirety and by substituting the following:

(a) GENERAL. Rates: (1) shall not be excessive, inadequate or unfairly discriminatory or, (2) in the case of an Advisory Prospective Loss Costs filing, shall reasonably reflect projected losses and loss adjustment expenses.

SECTION 31. Tennessee Code Annotated, Section 56-5-306(b), is amended by deleting such subsection in its entirety and by substituting the following:

(b)(1) With respect to workers' compensation insurance, every insurer shall file with the commissioner all rates, supplementary rate information, supporting information, policy forms and endorsements for use in this state. Any communication purporting to be a filing and not containing all of the information required in this section shall not constitute a filing and the commissioner shall inform the person sending such a communication within thirty (30) days of its receipt of such fact and of the need for additional information, and shall set forth a specific description of the information needed. Such a communication shall be deemed to be a filing when such information is furnished or when the person making the filing shall certify to the commissioner that such information is not maintained by such person or cannot be reasonably developed. The commissioner may give written notice within thirty (30) days of the filing, that the commissioner needs additional time, not to exceed thirty (30) days from the date of such notice, to consider the filing.

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(2) A workers' compensation insurance rate service organization may file a rate applicable only to policies issued through a residual market mechanism, and in such event such rates shall be subject to the procedures set forth in subdivision (b)(1). The commissioner shall act upon any such rate filing as quickly as practical.

SECTION 32. Tennessee Code Annotated, Section 56-5-306 is amended by adding new subsections (c) and (d), to read as follows:

(c) With respect to workers' compensation insurance, a workers' compensation insurance rate service organization designated by one or more insurers shall develop and file for approval with the commissioner in accordance with the provisions of this section, a filing on behalf of authorized insurers containing Advisory Prospective Loss Costs and supporting actuarial and statistical data for workers' compensation insurance. An advisory Prospective Loss Costs filing shall become effective when approved by the commissioner, who shall approve or disapprove the filing as soon as reasonably practical after the filing has been made. An Advisory Prospective Loss Costs filing shall be deemed to meet the requirements of this part and to become effective unless disapproved by the commissioner within thirty (30) days after the date on which it is received; provided, however, the commissioner may give notice within thirty (30) days of the receipt of such filing that the commissioner needs additional time, not to exceed thirty (30) days from the date of such notice, to consider the filing, and in such event the filing shall become effective upon the expiration of such additional waiting period unless earlier approved or disapproved by the commissioner. Each workers' compensation insurer, or group of insurers under common

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ownership, shall individually file with the commissioner all workers' compensation insurance rates, supplementary rate information, supporting information, its multiplier, policy forms and endorsements not later than fifteen (15) days after the effective date.

(d) Notwithstanding any other provision of law, a workers' compensation insurance rate service organization designated by one (1) or more insurers is authorized to make a rate filing applicable only to policies issued pursuant to the residual market mechanism established for workers' compensation insurance under § 56-5-314.

SECTION 33. Tennessee Code Annotated, Section 56-5-307(d), is amended by deleting such subsection in its entirety and by substituting instead the following:

(d) RATE SERVICE ORGANIZATION FILINGS

(1)(A) The filings required by §§ 56-5-305 and 56-5-306, including Advisory Prospective Loss Costs, other than rates for policies issued pursuant to any residual market mechanism for workers' compensation insurance established under § 56-5-314, may be made by a rate service organization designated by an insurer.

(B) The filings required by § 56-5-306 for rates for policies issued pursuant to any residual market mechanism established under § 56-5-314 for workers' compensation insurance shall be made by a rate service organization designated by the commissioner.

(2) An insurer may make a filing in compliance with Sections 56-5-305 and 56-5-306 and by giving written notice to the commissioner that the insurer is following rates as filed by a

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rate service organization in a particular line with any exceptions clearly set forth as are necessary to fully inform the commissioner."

SECTION 34. Tennessee Code Annotated, Section 56-5-308(a) and (b) are amended by deleting such subsections in their entireties and by substituting the following:

(a) BASIS FOR DISAPPROVAL

The commissioner shall disapprove a rate if (1) the commissioner finds that the rate is excessive, inadequate or unfairly discriminatory or (2) in the case of an Advisory Prospective Loss Costs filing, the commissioner finds such filing does not reasonably reflect projected losses, including loss adjustment expenses.

(b) DISAPPROVAL PROCEDURE

(1) If the commissioner disapproves a filing, the commissioner shall issue a written order specifying in what respect that the rate proposed in such filing is excessive, inadequate, or unfairly discriminatory or otherwise fails to meet the requirements of this part. The person making such filing shall be given a hearing upon written request made within thirty (30) days after the disapproval order.

(2) If the commissioner disapproves rates already in effect, the commissioner shall issue such an order only after a hearing held on not less than twenty (20) days written notice to the insurer or rate service organization which made the filing. The order shall be issued within fifteen (15) days after the close of the hearing and shall specify in what respects the rates fail to meet the requirements of this part. The order shall also state when, within a reasonable period of time, but

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not less than forty-five (45) days, the further use of such rate in contracts of insurance made thereafter shall be prohibited. The order may include a provision for premium adjustment for policies issued, renewed, or nonrenewed after the effective date of such order.

SECTION 35. Tennessee Code Annotated, Section 56-5-313 is amended by deleting such section in its entirety and substituting instead the following:

Except as provided in this chapter, no insurer may agree with any other insurer or with a rate service organization or an advisory organization to adhere to or use any rate or supplementary rate information. The fact that any insurer adheres to or uses such material is not sufficient in itself to support a finding that an agreement to adhere or use exists but may be used for the purpose of supplementing other evidence as to the existence of such agreement. Two (2) or more insurers having common ownership or operating in this state under common management or control may act in concert between or among themselves in the same manner as if they constitute a single insurer.

SECTION 36. Tennessee Code Annotated, Title 56, Chapter 5, is amended by adding the following new section:

Section _____. (a) The commissioner shall designate a rate service organization to assist him in gathering, compiling and reporting relevant workers' compensation insurance statistical information. Every workers' compensation insurer shall record and report its workers' compensation insurance experience to such designated rate service organization as set forth in the uniform statistical plan approved by the commissioner.

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(b) Each workers' compensation insurer shall be a member of the workers' compensation insurance rate service organization. Each workers' compensation insurer shall adhere to the policy forms filed by such designated rate service organization.

(c) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan that has been filed with the commissioner by such designated rate service organization and approved by the commissioner.

(d) Subject to the approval of the commissioner, the rate service organization shall develop and file rules reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan and the uniform classification system.

SECTION 37. Tennessee Code Annotated, title 56, chapter 5, is amended by adding the following new section:

Section _____. (a) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

(b) In order to further conform administration of rate regulatory laws, the commissioner and every insurer and the advisory organization designated by the commissioner may exchange information and experience data with insurance supervisory officials, insurers and advisory organization in other states and may consult with them with respect to rate making and the application of rating systems.

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(c) Cooperation among advisory organizations, or among advisory organizations and insurers in rate making or in other matters within the scope of this chapter is authorized, but the filings resulting from such cooperation are subject to all provisions of this chapter. The commissioner may review such cooperative activities and practices and, if after a hearing any such activity or practice is found to violate the provisions of this chapter, a written order may be issued specifying that such activity or practice violates the provision of this chapter and requiring the discontinuance of such activity.

SECTION 38. Nothing in Sections 23 through 32 of this act shall apply to pooling agreements described in Tennessee Code Annotated, Section 50-6-405(c).

SECTION 39. Should any court of competent jurisdiction declare any section, clause, or provision of this act to be unconstitutional, illegal, or unenforceable for any reason, such decision shall affect only such section, clause, or provision so declared unconstitutional, illegal, or unenforceable, and shall not affect any other section, clause, or provision of this act, it being the intent of the legislature that all other provisions of this act remain in full force and effect.

SECTION 40. This act shall take effect on becoming law, except for Sections 23 through 33 which shall take effect on January 1, 1996, the public welfare requiring it.